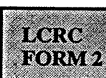


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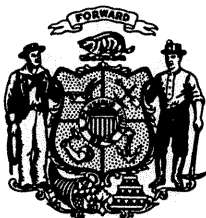


## WISCONSIN LEGISLATIVE COUNCIL STAFF

### ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Terry C. Anderson, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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### **CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### **CLEARINGHOUSE RULE 00-052**

AN ORDER to repeal and recreate chapter HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to people who need that care or treatment, and for barring persons because of specified convictions, charges or findings substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

03-07-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-04-00 REPORT SENT TO AGENCY.

RNS:AS:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒

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## CLEARINGHOUSE RULE 00-052

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

In s. HFS 12.12 (2) (a) 2., the department does not have statutory authority to permanently bar approval of a person who has been convicted of a crime that is not listed in s. 48.685 (5) (bm), Stats. However, since that provision refers to crimes listed in section III of the appendix, and no appendix was included with the rule that was submitted to the Rules Clearinghouse, it is not possible to ascertain whether the department has exceeded its authority. Also, since the statute refers only to offenses under Wisconsin statutes, not offenses committed in other jurisdictions, it is unclear under what authority the department is including offenses committed in other jurisdictions.

#### 2. Form, Style and Placement in Administrative Code

In s. HFS 12.03, sub. (1) should begin on a new line.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. HFS 12.02 (1) (b), " , Wis. Adm. Code," should be deleted.
- b. In s. HFS 12.03 (22) (b), "(1)" should be deleted because s. 48.833, Stats., does not contain a sub. (1).

- c. In s. HFS 12.12 (1) (b) 2., both instances of “(5) (d)” should be replaced with “(5d).”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. HFS 12.03, several of the definitions cite provisions in both ss. 48.685 and 50.065, Stats. These are drafted awkwardly. It seems unnecessary to divide each of these definitions into separate paragraphs. Perhaps the definitions in which the statutory definitions in the two sections are identical could simply state that the word or phrase has the definition given in the applicable sections (e.g., “direct contact” has the meaning specified in ss. 48.685 (1) (ar) and 50.065 (1) (br), Stats.). Perhaps the other definitions could be redrafted as follows: ““Caregiver” has the meaning specified in s. 48.685 (1) (ag) or 50.065 (1) (ag), whichever is applicable.”

b. In s. HFS 12.03 (12), “, unless all of the children are siblings, or if necessary to keep siblings together,” should be replaced with “or, if all are siblings,” to be consistent with the statutory language regarding foster homes.

c. In s. HFS 12.03 (25) (intro.), “, under ss. 48.685 (1) and 50.065 (1), Stats.,” could be deleted. Also, “both” could be replaced with “all” so that the paragraph need not be amended to accommodate additional paragraphs in the future.

d. In s. HFS 12.04 (1), “on file” should be deleted.

e. In s. HFS 12.04 (2), a comma should be inserted after “at a minimum.” Also, the comma following “name or names” should be moved to follow “and social security numbers.”

f. In s. HFS 12.05 (1) (a), “knew” should be replaced with “knows.”

g. In s. HFS 12.05 (2) (intro.), “All” should be replaced with “Any.”

h. In s. HFS 12.06 (1) (intro.), (2) (intro.) and (3) (intro.), “, any of the following” should be inserted at the end of the sentence.

i. In s. HFS 12.06 (1) (d), “their” should be replaced with “a client’s.”

j. In s. HFS 12.07 (1), “the abuse or neglect of, or threat of abuse or neglect to a child” should be replaced with “the abuse or neglect, or threat of abuse or neglect, of a child.”

k. In s. HFS 12.07 (3), what is the purpose of using the “regulatory agency’s next business day” instead of the “next business day”?

l. In s. HFS 12.12 (1) (a), “who are” should be inserted after “persons.” Also, “contracted” should be replaced with “contract.” Finally, “for those” should be inserted before “who are eligible to receive rehabilitation review.”



m. In s. HFS 12.12 (1) (b) 1., a phrase such as "if a plan submitted under s. 48.685 (5d) or 50.065 (5d), Stats., has been approved by the department" should be inserted at the end of the sentence.

n. In s. HFS 12.12 (2) (a) 1., the description of what is meant by "similar" is awkward. Perhaps the examples could be described more generally, such as positions that require a comparable level of direct contact with clients or application for different types of licenses that both relate to the care of children.

o. As noted earlier, s. HFS 12.12 (2) (a) 2. refers to an appendix. This is not attached to the rule.

p. In s. HFS 12.12 (4) (b), "*Timeframe*" should be written as two words.

q. In s. HFS 12.12 (4) (c), "*Requestor*" should be spelled "*Requester*." This comment also applies to sub. (5) (a) 2. and (c).

r. In s. HFS 12.12 (4) (d) (intro.), "residency" should be replaced with "residing."

s. In s. HFS 12.12 (4) (d) 8., does "similar authority" mean another jurisdiction? If so, please clarify.

t. In s. HFS 12.12 (4) (d) 10., "a" should be inserted before "profession."

u. In s. HFS 12.12 (5) (a) 3., "that" should be inserted before "he or she may appeal."

v. In s. HFS 12.12 (6) (b) and (c), "granted" should be replaced with "grants" or "has granted" and "when" should be replaced with "if."

w. In s. HFS 12.12 (6) (d), "that" should be inserted before "any person."

x. In s. HFS 12.12 (6) (h), "contracting" should be replaced with "contract" and "residing" should be replaced with "reside."

y. In s. HFS 12.12 (7) (c) 1., "can" should be replaced with "may."

z. In s. HFS 12.12 (7) (c) 4., "in fact" could be deleted.

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING AND RECREATING RULES

To repeal and recreate chapter HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to people who need that care or treatment, and for barring persons because of specified convictions, charges or findings substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider.

Analysis Prepared by the Department of Health and Family Services

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child-placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non-client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999-2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12 before September 12, 1999. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999-2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This was done by emergency order effective February 13, 2000 to remove public confusion resulting from continued reliance on administrative rules, that have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

These proposed rules are the same as the emergency rules. Therefore, they minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

- Sanctions associated with the acts committed under the Caregiver Law;
- Determining whether an offense is substantially related to client care;
- Reporting responsibilities; and
- The conduct of rehabilitation review.

The Department's authority to repeal and recreate these rules is found in ss. 48.685 (1) (ag), (2) (d), (4), (5), (6) (b) and (c) and 50.065 (1) (ag), (d) and (f), (2) (d), (4), (5) and (6) (b) and (c), Stats., as repealed and recreated by 1999 Wisconsin Act 9, and ss. 227.11 (2) (a), Stats. The rules interpret ss. 48.685 and 50.065, Stats., as repealed and recreated by 1999 Wisconsin Act 9, and s. 120.13 (14), Stats.

SECTION 1. Chapter HFS 12 is repealed and recreated to read:

## CHAPTER 12

### CAREGIVER BACKGROUND CHECKS

HFS 12.01	Authority and purpose.
HFS 12.02	Applicability.
HFS 12.03	Definitions.
HFS 12.04	Contracting for background checks.
HFS 12.05	Sanctions.
HFS 12.06	Determining whether an offense is substantially related to client care.
HFS 12.07	Reporting background changes and nonclient residency.
HFS 12.08	Armed forces background searches.
HFS 12.09	Transmittal of background check information.
HFS 12.10	Maintaining confidentiality of background information disclosure forms.
HFS 12.11	Supervision pending receipt of caregiver background checks.
HFS 12.12	Rehabilitation process for persons who have committed certain offenses.

### SUBCHAPTER I – GENERAL PROVISIONS

**HFS 12.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), and (6) (b) and (c); and 50.065 (1) (ag) 1. a., (d) and (f), (2) (d), (4), (5) and (6) (b) and (c); and 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

**HFS 12.02 Applicability.** (1) SCOPE. (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to all persons, agencies and entities that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13 (14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. HFS or HSS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 82, 83, 88, 89, 110, 111, 112, 124, 127, 131, 132, 133 and 134, ~~Wis. Adm. Code~~, and any other direct client care or treatment program that may be licensed or certified or registered by the department.

**HFS 12.03 Definitions.** In this chapter: (1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HFS 51 or 54.

(2) "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.

(3) "Background information disclosure form" means the department's form, HFS 64, on which a person provides certain information concerning the person's background.

(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval or be employed as a caregiver by or under contract with an entity or to reside as a nonclient at an entity.

(5) "Caregiver" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ag), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (ag), Stats.

(6) "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment under s. 48.975, Stats., is being made.

(7) "Contractor" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.

(b) For purposes of s. 50.065, Stats, the meaning specified in s. 50.065 (1) (bm), Stats.

(8) "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

(9) "Department" means the Wisconsin department of health and family services.

(10) "Direct contact" has: ~~(a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.~~

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (br), Stats.

(11) "Entity" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (b), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (c), Stats.

(12) "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1) (a), Stats., in which care and maintenance are provided for no more than 4 foster children, ~~unless all of the children are siblings, or if necessary to keep siblings together, for no more than 6 children,~~ and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 49.975, Stats. ✓

(13) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(14) "Nonclient resident" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (bm), Stats. *Handwritten: Nonclient*

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (cn), Stats.

(15) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133 and certified as a personal care worker agency under s. HFS 105.17 (1). *Handwritten: CHS*

(16) "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

(17) "Regulatory approval" means: (a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

(18) "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory

approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.

(19) "School board" means the school board or board of school directors in charge of the schools of a school district.

(20) "Serious crime" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (c), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (e), Stats.

(21) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133.

(22) (a) "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833 (1), Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift-staffed facility, except as permitted under s. HSS 56.01 (4) (b).

(23) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

(24) "Tribe" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (e), Stats.

(b) For purposes of s. 50.065 (1) (g), the meaning specified in s. 50.065 (1) (g), Stats.

(25) "Under the entity's control" means, under ss. 48.685 (1) and 50.065 (1), Stats., an entity does both of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.
2. The conditions under which the person performs his or her duties.
3. The tasks the person performs.
4. The person's work schedule.
5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.

6. The compensation the person receives for performing his or her duties.

## SUBCHAPTER II - BACKGROUND CHECKS

**HFS 12.04 Contracting for background checks.** (1) An entity may enter into and shall retain on file an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065 (1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person retain required background information related to caregivers, contractors, or students, including temporary employees or students who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

(2) An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names and social security numbers if available, of the caregivers, temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.

**Note:** To obtain a master copy of the HFS – 64 Background Information Disclosure Form, in order to reproduce it, either download the form from the Department's internet web site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 49.981 (7), Stats.

**HFS 12.05 Sanctions.** (1) **SANCTIONABLE ENTITY ACTIONS.** An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside as a nonclient resident at the entity a person who has direct, regular contact with clients and who the entity knew or should have known is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

(2) **ENTITY SANCTIONS.** All of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed \$1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

(3) **SANCTIONABLE INDIVIDUAL ACTIONS.** Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

(a) Fails to complete and submit the background information disclosure form to the appropriate agency or entity.

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information disclosure form.

(4) **INDIVIDUAL SANCTIONS.** All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed \$1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of employment as a caregiver, of a contract with an entity or of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.

**HFS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065 (5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another's property is substantially related to the care of a client, the agency or entity may consider all of the following:

(1) In relation to the job:

(a) The nature and scope of the job's client contact.



(b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.

(c) The opportunity the job presents for committing similar offenses.

(d) The extent to which acceptable job performance requires the trust and confidence of clients or their parent or guardian.

(e) The amount and type of supervision received in the job.

(2) In relation to the offense:

(a) Whether intent is an element of the offense.

(b) Whether the elements or circumstances of the offense are substantially related to the job duties.

(c) The pattern of offenses.

(d) The extent to which the offense relates to vulnerable clients.

(e) Whether the crime involves violence or a threat of harm.

(f) Whether the crime is of a sexual nature.

(3) In relation to the person:

(a) The number and type of offenses the person committed or for which the person has been convicted.

(b) The length of time between convictions or offenses and the employment decision.

(c) The individual's employment history, including references, if available.

(d) The individual's participation in or completion of pertinent programs of a rehabilitative nature.

(e) The individual's probation or parole status.

(f) The individual's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.

(g) The age of the individual on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

**HFS 12.07 Reporting background changes and nonclient residency.** (1) An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity

as soon as possible, but no later than the person's next working day, when the person has been convicted of any crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect of, or threat of abuse or neglect to a child. ✓

(2) When a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed or who is a nonclient resident at the entity has been convicted of a crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the conviction or investigation to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

(3) When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13 (14), Stats., and submit a completed background information disclosure form for the new nonclient resident or new signatory, to the regulatory agency. 7

**HFS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**HFS 12.09 Transmittal of background check information.** (1) When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

- (a) Any reason for denial or revocation of a license or denial of an adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

(2) A child-placing agency or county department shall provide the department with written information about each person to whom the child-placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

- (a) The reason for denial or revocation of a license or denial of adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708-8916.

(3) In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

(4) In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child-placing agency for a person who is in a home studied for adoptive parent applicant approval.

**HFS 12.10 Maintaining confidentiality of background information disclosure forms.** Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**HFS 12.11 Supervision pending receipt of caregiver background checks.** Entity supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

### SUBCHAPTER III – REHABILITATION REVIEW

**HFS 12.12 Rehabilitation process for persons who have committed certain offenses.**

(1) **GENERAL PROVISIONS.** (a) An agency shall conduct rehabilitation reviews as described in this section for the entities the agency regulates, and for persons employed by or contracted with and who reside as nonclients at those entities, who are eligible to receive rehabilitation review under this section.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats.

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5) (d) and 50.065 (5) (d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707-7850.

(2) **ELIGIBILITY TO REQUEST REHABILITATION REVIEW.** (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, "similar" means regulatory approval, or a job function or activity that could be categorized in a general way, such as: a review involving the question of direct client contact; or that would involve a similar job function or activity that allows unsupervised client access; or the review involved a family day care and now the applicant seeks a group day care license; or the applicant sought a group home license and now seeks a child caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5) (bm) 1., 2. or 3., Stats., another crime listed in section III. of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS-263) in order to reproduce it, either download the form from the Department's Internet site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

(3) INITIATING A REHABILITATION REVIEW REQUEST. To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

(4) PROCESSING REHABILITATION REVIEW REQUESTS. (a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Timeframe.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requestor appearance.* The person requesting the review shall have an opportunity to appear before the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.

8. Whether the person is on the sexual offender registry under s. 301.45, Stats., or under a similar authority. *if this is the reason*

9. A victim's impact statement, if appropriate *2*

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to profession. *6*

11. The nature and scope of the person's contact with clients in the position requested.

12. The degree to which the person would be directly supervised or working independently in the position requested.

13. The opportunity presented for someone in the position to commit similar offenses. *6*

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

(5) REHABILITATION DECISIONS. (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requestor, the panel may defer a final decision for a period of not more than 6 months from the initial decision date. *7*

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester; he or she may appeal the decision as described in s. 48.685 (5c), Stats., or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.

**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a Department denial of a rehabilitation request, send the appeal request to the Department Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707-7850. 2. To appeal a school board denial of a rehabilitation request, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608-266-3390. 3. To appeal a county denial of a rehabilitation request, send the appeal request to the appropriate county. When any of the preceding rehabilitation requests are denied, a further appeal is available under ch. 227, Stats. Send a request for a ch. 227, Stats., hearing to appeal any of the preceding Department, Department of Public Instruction or county denials of rehabilitation requests to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed in a federally-certified nursing home or a federally-certified ICF/MR. If a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non-client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requestor and a copy, if appropriate, to the entity, and, within 10 days, shall also send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requestor's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707-7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

(6) REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS. (a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation—mandatory withdrawal.* An agency or tribe that granted a person a rehabilitation approval shall withdraw the approval when the agency or tribe learns that the person has been convicted of a new crime, act, or offense and is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation—summary suspension.* An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.
2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval that becomes aware any person has violated his or her rehabilitation approval under par. (b) or (c) shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under sub. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re-imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (c) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707-7850.

(7) **SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL.** (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval can be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following:

a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has in fact had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:



1. An approval to be a foster parent by one county or child-placing agency is not, unless approved by the other county or child-placing agency, transferable to the other county or child-placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as any limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

5. A rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as any limitations or conditions can be met.

The repeal and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and  
Family Services

Dated: February 25, 2000

By: \_\_\_\_\_

Joseph Leean  
Secretary

SEAL:

## FISCAL ESTIMATE FORM

1999 Session

☒ ORIGINAL☐ UPDATED☐ CORRECTED☐ SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # HFS 12

Subject

## CAREGIVER BACKGROUND CHECKS: AMENDMENTS TO THE CRIMES LIST

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation☐ Increase Existing Revenues☐ Decrease Existing Appropriation☐ Decrease Existing Revenues☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No

☐ Decrease CostsLocal: ☒ No local government costs1. ☐ Increase Costs☐ Permissive ☐ Mandatory2. ☐ Decrease Costs☐ Permissive ☐ Mandatory3. ☐ Increase Revenues☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities☐ Counties ☐ Others \_\_\_\_\_☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This order revises ch. HFS 12 in response to a variety of changes made to ss. 48.685 and 50.065, Stats., through 1999 Wisconsin Act 9. The changes made to ch. HFS 12 through this rulemaking order largely are for the purpose of making ch. HFS 12 consistent with chs. 48 and 50, Stats. Principal among these changes are revision of the list of crimes bearing on the suitability of a person to serve as a caregiver or reside as a nonclient at particular facilities and a simplification of the rule's language to the extent that the rules principally address only those aspects of the caregiver background check process and the Department's conduct of rehabilitation review that are not specified in statute.

Because this order simply implements changes to chs. 48 and 50, Stats., in Act 9, the order, by itself, does not affect the expenditures or revenues of state government or local governments. Any changes to workload, revenues and expenditures were accounted for in Act 9.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name

OSF/Andy Forsaith, 266-7684

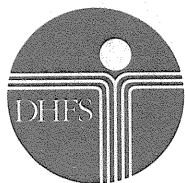
Authorized Signature / Telephone No.

John Kiesow, 266-9622

Date

2-28-00  
1/31/00

FEB 11 2000



State of Wisconsin  
**Department of Health and Family Services**

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Tommy G. Thompson, Governor  
Joe Leean, Secretary

February 11, 2000

The Honorable Judy Robson, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin

Dear Senator Robson and Representative Grothman:

This is notification that tomorrow, February 12<sup>th</sup>, the Department will publish an emergency rulemaking order to repeal and recreate ch. HFS 12, its rules for the Caregiver Background Check Program under ss. 48.685 and 50.065, Stats. The rules implement significant statutory changes made to the program effective October 29, 1999 by 1999 Wisconsin Act 9. A copy of the emergency order is attached to this letter.

The changes made in the program statutes by Act 9 include a narrowing of both convictions that constituted bars to being employed as a caregiver and convictions that required a Department rehabilitation review. In September, 1999, in anticipation of 1999 Wisconsin Act 9's passage, the Department reissued a modified crimes table as an appendix to ch. HFS 12 as emergency rules. The list of crimes in the appendix reflected changes subsequently made to the statutes by Act 9. Those emergency rules will expire at the end of Saturday, February 12, 2000.

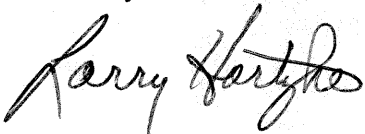
While the most dramatic changes made to ss. 48.685 and 50.065, Stats., by 1999 Wisconsin Act 9 concerned the list of subject crimes, a variety of other changes were also made to the caregiver background check process. To address these sundry changes, the Department is repealing and recreating ch. HFS 12 (including the current crimes list appendix). In so doing, the Department has substantially revised and shortened ch. HFS 12 by eliminating repetition of ss. 48.695 and 50.065, Stats., requirements. The rules to be issued as emergency rules simply supplement those statutes by providing guidance on sanctions associated with acts committed under the caregiver law; determining whether an offense is substantially related to client care; reporting responsibilities; and, the largest section of the chapter, the conduct of rehabilitation review.

The rules are being issued as emergency rules so that they immediately replace both the permanent ch. HFS 12 rules (that are no longer consistent with ss. 48.685 and 50.065, Stats.) and the statutorily consistent (but expiring) appendix to ch. HFS 12. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to

bring its rules for operation of the Caregiver Law into conformity with the revised statutes. These rules are being published by emergency order so that public confusion resulting from the administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes. The Department will follow these rules with permanent rules.

If you have any questions about this emergency rulemaking order, you may contact Sue Dow of the Department's Office of Legal Counsel at 264-9893.

Sincerely,

A handwritten signature in cursive script, reading "Larry Hartzke". The signature is written in dark ink and is positioned above the printed name and title.

Larry Hartzke  
Administrative Rules Manager

Attachment

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING AND RECREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child-placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non-client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999-2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999-2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This is being done as quickly as possible by emergency order to remove public confusion resulting from administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

The revised rules minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

- Sanctions associated with the acts committed under the Caregiver Law;

- Determining whether an offense is substantially related to client care;
- Reporting responsibilities; and
- The conduct of rehabilitation review.

## ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (1) (ag), (2) (d), (4), (5), (6) (b) and (c) and 50.065 (1) (ag), (d) and (f), (2) (d), (4), (5) and (6) (b) and (c), Stats., as repealed and recreated by 1999 Wisconsin Act 9, and ss. 227.11 (2) and 227.24 (1), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as repealed and recreated by 1999 Wisconsin Act 9, as follows:

SECTION 1. Chapter HFS 12 is repealed and recreated to read:

## CHAPTER 12

### CAREGIVER BACKGROUND CHECKS

HFS 12.01	Authority and purpose.
HFS 12.02	Applicability.
HFS 12.03	Definitions.
HFS 12.04	Contracting for background checks.
HFS 12.05	Sanctions.
HFS 12.06	Determining whether an offense is substantially related to client care.
HFS 12.07	Reporting background changes and nonclient residency.
HFS 12.08	Armed forces background searches.
HFS 12.09	Transmittal of background check information.
HFS 12.10	Maintaining confidentiality of background information disclosure forms.
HFS 12.11	Supervision pending receipt of caregiver background checks.
HFS 12.12	Rehabilitation process for persons who have committed certain offenses.

### SUBCHAPTER I – GENERAL PROVISIONS

**HFS 12.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), and (6) (b) and (c); and 50.065 (1) (ag) 1. a., (d) and (f), (2) (d), (4), (5) and (6) (b) and (c); and 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

**HFS 12.02 Applicability.** (1) **SCOPE.** (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to all persons,

agencies and entities that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13 (14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. HFS or HSS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 82, 83, 88, 89, 110, 111, 112, 124, 127, 131, 132, 133 and 134, Wis. Adm. Code, and any other direct client care or treatment program that may be licensed or certified or registered by the department.

**HFS 12.03 Definitions.** In this chapter: (1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HFS 51 or 54.

(2) "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.

(3) "Background information disclosure form" means the department's form, HFS 64, on which a person provides certain information concerning the person's background.

(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval or be employed as a caregiver by or under contract with an entity or to reside as a nonclient at an entity.

(5) "Caregiver" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ag), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (ag), Stats.

(6) "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment under s. 48.975, Stats., is being made.

(7) "Contractor" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.

(b) For purposes of s. 50.065, Stats, the meaning specified in s. 50.065 (1) (bm), Stats.

(8) "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

(9) "Department" means the Wisconsin department of health and family services.

(10) "Direct contact" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (ar), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (br), Stats.

(11) "Entity" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (b), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (c), Stats.

(12) "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1) (a), Stats., in which care and maintenance are provided for no more than 4 foster children, unless all of the children are siblings, or if necessary to keep siblings together, for no more than 6 children, and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 49.975, Stats.

(13) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(14) "Nonclient resident" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (bm), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (cn), Stats.

(15) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(16) "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

(17) "Regulatory approval" means: (a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

(18) "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.



(19) "School board" means the school board or board of school directors in charge of the schools of a school district.

(20) "Serious crime" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (c), Stats.

(b) For purposes of s. 50.065, Stats., the meaning specified in s. 50.065 (1) (e), Stats.

(21) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133.

(22) (a) "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833 (1), Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift-staffed facility, except as permitted under s. HSS 56.01 (4) (b).

(23) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

(24) "Tribe" has: (a) For purposes of s. 48.685, Stats., the meaning specified in s. 48.685 (1) (e), Stats.

(b) For purposes of s. 50.065 (1) (g), the meaning specified in s. 50.065 (1) (g), Stats.

(25) "Under the entity's control" means, under ss. 48.685 (1) and 50.065 (1), Stats., an entity does both of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.
2. The conditions under which the person performs his or her duties.
3. The tasks the person performs.
4. The person's work schedule.
5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.
6. The compensation the person receives for performing his or her duties.

## SUBCHAPTER II - BACKGROUND CHECKS

**HFS 12.04 Contracting for background checks.** (1) An entity may enter into and shall retain on file an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065 (1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person retain required background information related to caregivers, contractors, or students, including temporary employees or students who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

(2) An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names, and social security numbers if available, of the caregivers, temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.

**Note:** To obtain a master copy of the HFS – 64 Background Information Disclosure Form, in order to reproduce it, either download the form from the Department's internet web site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 49.981 (7), Stats.

**HFS 12.05 Sanctions.** (1) **SANCTIONABLE ENTITY ACTIONS.** An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside as a nonclient resident at the entity a person who has direct, regular contact with clients and who the entity knew or should have known is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

(2) **ENTITY SANCTIONS.** All of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed \$1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

(3) **SANCTIONABLE INDIVIDUAL ACTIONS.** Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

(a) Fails to complete and submit the background information disclosure form to the appropriate agency or entity.

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information disclosure form.

(4) **INDIVIDUAL SANCTIONS.** All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed \$1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of employment as a caregiver, of a contract with an entity or of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.

**HFS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065 (5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another's property is substantially related to the care of a client, the agency or entity may consider all of the following:

(1) In relation to the job:

(a) The nature and scope of the job's client contact.

(b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.

(c) The opportunity the job presents for committing similar offenses.

(d) The extent to which acceptable job performance requires the trust and confidence of clients or their parent or guardian.

(e) The amount and type of supervision received in the job.

(2) In relation to the offense:

(a) Whether intent is an element of the offense.

(b) Whether the elements or circumstances of the offense are substantially related to the job duties.

(c) The pattern of offenses.

(d) The extent to which the offense relates to vulnerable clients.

(e) Whether the crime involves violence or a threat of harm.

(f) Whether the crime is of a sexual nature.

(3) In relation to the person:

(a) The number and type of offenses the person committed or for which the person has been convicted.

(b) The length of time between convictions or offenses and the employment decision.

(c) The individual's employment history, including references, if available.

(d) The individual's participation in or completion of pertinent programs of a rehabilitative nature.

(e) The individual's probation or parole status.

(f) The individual's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.

(g) The age of the individual on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

**HFS 12.07 Reporting background changes and nonclient residency.** (1) An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when the person has been convicted of any crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect of, or threat of abuse or neglect to a child.

(2) When a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed or who is a nonclient resident at the entity has been convicted of a crime or has been or is being investigated by any governmental agency for any other act, offense, or omission, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the conviction or investigation to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

(3) When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13 (14), Stats., and submit a completed background information disclosure form for the new nonclient resident or new signatory, to the regulatory agency.

**HFS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**HFS 12.09 Transmittal of background check information.** (1) When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

- (a) Any reason for denial or revocation of a license or denial of an adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

(2) A child-placing agency or county department shall provide the department with written information about each person to whom the child-placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

- (a) The reason for denial or revocation of a license or denial of adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708-8916.

(3) In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

(4) In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child-placing agency for a person who is in a home studied for adoptive parent applicant approval.

**HFS 12.10 Maintaining confidentiality of background information disclosure forms.**

Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**HFS 12.11 Supervision pending receipt of caregiver background checks.**

Entity supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

**SUBCHAPTER III – REHABILITATION REVIEW**

**HFS 12.12 Rehabilitation process for persons who have committed certain offenses.**

(1) GENERAL PROVISIONS. (a) An agency shall conduct rehabilitation reviews as described in this section for the entities the agency regulates, and for persons employed by or contracted with and who reside as nonclients at those entities, who are eligible to receive rehabilitation review under this section.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats.

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5) (d) and 50.065 (5) (d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707–7850.

(2) ELIGIBILITY TO REQUEST REHABILITATION REVIEW. (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, “similar” means regulatory approval, or a job function or activity that could be categorized in a general way, such as: a review involving the question of direct client contact; or that would involve a similar job function or activity that allows unsupervised client access; or the review involved a family day care and now the applicant seeks a group day care license; or the applicant sought a group home license and now seeks a child caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5) (bm) 1., 2. or 3., Stats., another crime listed in section III. of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS-263) in order to reproduce it, either download the form from the Department's internet site at [www.dhfs.state.wi.us/caregiver/forms/index.htm](http://www.dhfs.state.wi.us/caregiver/forms/index.htm), or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

(3) INITIATING A REHABILITATION REVIEW REQUEST. To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

(4) PROCESSING REHABILITATION REVIEW REQUESTS. (a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Timeframe.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requestor appearance.* The person requesting the review shall have an opportunity to appear before the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.

8. Whether the person is on the sexual offender registry under s. 301.45, Stats., or under a similar authority.

9. A victim's impact statement, if appropriate.

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to profession.

11. The nature and scope of the person's contact with clients in the position requested.

12. The degree to which the person would be directly supervised or working independently in the position requested.

13. The opportunity presented for someone in the position to commit similar offenses.

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

(5) REHABILITATION DECISIONS. (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requestor, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester he or she may appeal the decision as described in s. 48.685 (5c), Stats., or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.



**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a Department denial of a rehabilitation request, send the appeal request to the Department Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707-7850. 2. To appeal a school board denial of a rehabilitation request, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608-266-3390. 3. To appeal a county denial of a rehabilitation request, send the appeal request to the appropriate county. A request for a ch. 227, Stats., hearing to appeal any of the preceding Department, Department of Public Instruction or county denials of rehabilitation requests should be sent to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed in a federally-certified nursing home or a federally-certified ICF/MR. If a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non-client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requestor and a copy, if appropriate, to the entity, and, within 10 days, shall also send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requestor's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707-7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

(6) **REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS.** (a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation--mandatory withdrawal.* An agency or tribe that granted a person a rehabilitation approval shall withdraw the approval when the agency or tribe learns that the person has been convicted of a new crime, act, or offense and is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation—summary suspension.* An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.

2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval that becomes aware any person has violated his or her rehabilitation approval under par. (b) or (c) shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under sub. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re-imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (c) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707-7850.

(7) **SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL.** (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency

regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval can be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following:

a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has in fact had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:

1. An approval to be a foster parent by one county or child-placing agency is not, unless approved by the other county or child-placing agency, transferable to the other county or child-placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as any limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

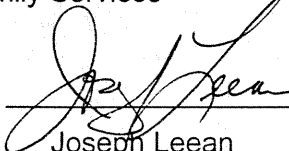
4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

5. A rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as any limitations or conditions can be met.

The rules contained in this order shall take effect as emergency rules on February 13, 2000.

Dated: February 7, 2000

Wisconsin Department of Health and  
Family Services

By:   
Joseph Leean  
Secretary

SEAL:

# APPENDIX A

## OFFENSES AFFECTING CAREGIVER ELIGIBILITY

FEBRUARY, 2000

### INTRODUCTION

This document lists Wisconsin crimes and other offenses that the Wisconsin State Legislature, under the Caregiver Law, ss. 48.685 and 50.065, Stats., has determined either require rehabilitation review approval before a person may receive regulatory approval, may work as a caregiver, may reside as a nonclient resident at or contract with an entity, or that act to permanently bar a person from receiving regulatory approval to be a foster parent.

**NOTE: This table reflects changes in the caregiver law made by 1999 Wisconsin Act 9.**

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime that is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended. For example, convictions under Chapter 961, the Uniform Controlled Substances Act, were previously convictions under Chapter 161.

Notwithstanding s. 111.335, Stats., ss. 48.685(5m) and 50.065(5m), Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to employ, contract with or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in part III. of this appendix for foster care purposes only.

Under the Caregiver Law, current limitations on a person's professional credentials may limit the person's eligibility for employment or licensure in a position for which the person must be credentialed by the department of regulation and licensing.

If a Background Information Disclosure form, a caregiver background check, or any other information shows that a person was convicted of any of the offenses immediately below within 5 years before the information was obtained, the department, county department, child welfare agency, school board, or entity, as applicable, shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that conviction.

940.19 (1)	Misdemeanor battery
940.195	Battery to an unborn child
940.20	Battery, special circumstances
941.30	Reckless endangerment
942.08	Invasion of Privacy
947.01	Disorderly conduct
947.013	Harassment

# **I. Entities and Programs Serving Only Persons 18 Years of Age or Older**

## **CONVICTIONS**

Regulatory approval, employment as a caregiver, and nonclient residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve only clients 18 years of age or older.

Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (misdemeanor or felony)
948.02 (1)	1st degree sexual assault of a child
948.025	Repeated acts of sexual assault of a child
948.03 (2) (a)	Physical abuse of a child – intentional – cause great bodily harm
<b>OTHER OFFENSES</b>	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect

## II. Entities and Programs Serving Any Clients Under the Age of 18

### CONVICTIONS

Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are prohibited until rehabilitation approval is received, for all entities and programs that serve any clients who are under the age of 18. (For additional federal foster care bars, see part III. below.)

Wis. Stats.	Crime
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients & residents (misdemeanor or felony)
948.02 (1) or (2)	1st or 2nd degree sexual assault of a child
948.025	Repeated acts of sexual assault of same child
948.03 (2) (a), (b), or (c)	Physical abuse of a child – intentional causation of bodily harm
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21 (1)	Neglect of a child – resulting in death (felony)
948.30	Abduction of another's child; constructive custody
OTHER OFFENSES	
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
---	Finding by a governmental agency of child abuse or neglect

### III. Foster Care

#### CONVICTIONS

By federal or state law, for **Foster Homes and Treatment Foster Homes**, regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred as follows:

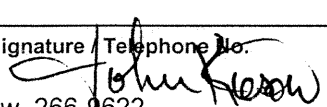
Permanent bar = Conviction acts as permanent bar.  
 Spouse = Permanent bar applies when spouse was the victim in the offense.  
 5 years = Bar is for 5 years from time crime committed.  
 Spouse / 5 years / R = If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed; then must show rehabilitation.  
 Spouse / 5 years = If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed.  
 Bar w/ rehab = Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred until rehabilitation approval is received.

Wis. Stats.	Crime	Federal law / Foster Care Bar
940.01	First degree intentional homicide	Permanent bar
940.02	1st degree reckless homicide	Permanent bar
940.03	Felony murder	Permanent bar
940.05	2nd degree intentional homicide	Permanent bar
940.06	2nd degree reckless homicide	Permanent bar
940.12	Assisting suicide	Bar w/ rehab
940.19 (2) through (6)	Battery (felony)	Spouse / 5 years / R
940.20	Battery – special circumstances	5 years
940.20 (1) or (1m)	Battery – special circumstances	Spouse
940.203	Battery or threat to judge	5 years
940.205	Battery or threat to a Department of Revenue employee	5 years
940.207	Battery or threat to a Department of Commerce or DWD employee	5 years
940.21	Mayhem	Permanent bar
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report	Bar w/ rehab
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault	Permanent bar
940.23	Reckless injury	Permanent bar
940.285	Abuse of vulnerable adults (misdemeanor or felony)	Bar w/ rehab
940.29	Abuse of residents of a penal facility	Bar w/ rehab
940.295	Abuse or neglect of patients or residents (misdemeanor or felony)	Bar w/ rehab
940.305	Taking hostages	Permanent bar
940.31	Kidnapping	Permanent bar
941.20 (2) or (3)	Endangers safety by use of a dangerous weapon	Permanent bar
941.21	Disarming a peace officer	Permanent bar
943.10(2)	Burglary while armed	Permanent bar
943.23 (1g), (1m) or (1r)	Operating motor vehicle without owner's consent (OMVWOC)	Permanent bar
943.32 (2)	Robbery with dangerous weapon	Permanent bar
948.02 (1), (2), (3), or (3m)	1st or 2nd degree sexual assault of a child; failure to act; penalty enhancement	Permanent bar



948.025	Repeated acts of sexual assault of a child	Permanent bar
948.03 (2), (3), or (4)	Physical abuse of a child	Permanent bar
948.04	Causing mental harm to a child	Permanent bar
948.05	Sexual exploitation of a child	Permanent bar
948.055	Causing a child to view or listen to sexual activity	Permanent bar
948.06	Incest with a child	Permanent bar
948.07	Child enticement	Permanent bar
948.08	Soliciting a child for prostitution	Permanent bar
948.095	Sexual assault of student by school staff	Permanent bar
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)	Permanent bar
948.12	Possession of child pornography	Permanent bar
948.13	Child sex offender working with children	Permanent bar
948.20	Abandonment of a child	Permanent bar
948.21 (1)	Neglect of a child – resulting in death (felony)	Permanent bar
948.22	Failure to support (felony)	Permanent bar
948.23	Concealing death of a child	Permanent bar
948.24	Unauthorized placement for adoption	Permanent bar
948.30	Abduction of another's child; constructive custody	Permanent bar
948.31	Interference with custody by parent or others	Permanent bar
948.35	Solicitation of a child to commit a felony	Permanent bar
948.36	Use of a child to commit a class A felony	Permanent bar
948.40	Contributing to the delinquency of a minor (felony)	Permanent bar
948.51	Hazing (felony)	Permanent bar
948.60	Possession of a dangerous weapon by a person under 18 (felony)	Permanent bar
948.605 (3)	Gun-free school zones; discharge of firearm in a school zone (felony)	Permanent bar
948.61	Dangerous weapons other than firearms on school premises (felony)	Permanent bar
948.62	Receiving stolen property from a child (felony)	Permanent bar
---	<b>All other Chapter 948 crimes that are felonies</b>	<b>Permanent bar</b>
961.41 (1)	Manufacture, distribution or delivery (felony)	5 years
961.41 (1m)	Possession with intent to manufacture, distribute, or deliver (felony)	5 years
961.41 (3g)	Possession (felony)	5 years
961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge (felony)	5 years
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (felony)	5 years
961.455	Using a child for illegal drug distribution or manufacturing purposes (felony)	5 years
961.46	Distribution to persons under 18 (felony)	5 years
961.465	Distribution to prisoners	5 years
961.49	Distribution of or possession with intent to deliver at or near certain places	5 years
961.492	Distribution of or possession with intent to deliver on public transit (felony)	5 years
---	<b>All other ch. 961 offenses that are felonies</b>	<b>5 years</b>

OTHER OFFENSES		
---	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property	Bar w/ rehab
---	Finding by a governmental agency of child abuse or neglect	Bar w/ rehab

<b>FISCAL ESTIMATE FORM</b>		<b>1999 Session</b>	
<input checked="checked" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		<b>LRB #</b> <b>INTRODUCTION #</b> Admin. Rule # <b>HFS 12</b>	
<b>Subject</b> <b>CAREGIVER BACKGROUND CHECKS: AMENDMENTS TO THE CRIMES LIST</b>			
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs	
<b>Local: <input checked="checked" type="checkbox"/> No local government costs</b>			
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		<b>Affected Ch. 20 Appropriations</b>	
<b>Assumptions Used in Arriving at Fiscal Estimate:</b>  <p>This order revises ch. HFS 12 in response to a variety of changes made to ss. 48.685 and 50.065, Stats., through 1999 Wisconsin Act 9. The changes made to ch. HFS 12 through this rulemaking order largely are to making ch. HFS 12 consistent with chs. 48 and 50, Stats. Principal among these changes are revision of the list of crimes bearing on the suitability of a person to serve as a caregiver or reside as a nonclient at particular facilities and a simplification of the rule's language to the extent that the rules principally address only those aspects of the caregiver background check process and the Department's conduct of rehabilitation review that are not specified in statute.</p> <p>Because this order simply implements changes to chs. 48 and 50, Stats., in Act 9, the order, by itself, does not affect the expenditures or revenues of state government or local governments. Any changes to workload, revenues and expenditures were accounted for in Act 9.</p>			
<b>Long-Range Fiscal Implications:</b>			
<b>Prepared By: / Phone # / Agency Name</b> OSF/Andy Forsaith, 266-7684		<b>Authorized Signature / Telephone No.</b> <div style="text-align: center;">           John Kiesow, 266-9622       </div>	
		<b>Date</b> <u>2-7-00</u> 1/31/00	